

Information Item: Overview of application to the Commission of AOPA and Rule Adoption Amendments in P.L. 72-2014 (HEA 1121)

I.C. 4-21.5-3-11

Ex parte communications; violations

Sec. 11. (a) Except as provided in subsection (b) or unless required for the disposition of ex parte matters specifically authorized by statute, an administrative law judge serving in a proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding while the proceeding is pending, with:

- (1) any party;
- (2) any individual who has a direct or indirect interest in the outcome of the proceeding;
- (3) any individual who presided at a previous stage of the proceeding; or
- (4) any individual who is prohibited from assisting the administrative law judge under section 13 of this chapter;

without notice and opportunity for all parties to participate in the communication.

(b) A member of a multimember panel of administrative law judges may communicate with other members of the panel regarding a matter pending before the panel, and any administrative law judge may receive aid from staff assistants. However, a staff assistant may not communicate to an administrative law judge any:

- (1) ex parte communications of a type that the administrative law judge would be prohibited from receiving under subsection (a); or
- (2) information that would furnish, augment, diminish, or modify the evidence in the record.

(c) Unless required for the disposition of ex parte matters specifically authorized by statute, a person described by subsection (a)(1), (a)(2), (a)(3), or (a)(4) may not communicate, directly or indirectly, in connection with any issue in that proceeding while the proceeding is pending, with any person serving as administrative law judge without notice and opportunity for all parties to participate in the communication.

(d) If, before serving as administrative law judge in a proceeding, an individual receives an ex parte communication of a type that would not properly be received while serving, the individual, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (e).

(e) An administrative law judge who receives an ex parte communication in violation of this section shall:

- (1) place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each individual from whom the administrative law judge received an ex parte communication; and

(2) advise all parties that these matters have been placed on the record.
Any person described by subsection (a)(1), (a)(2), (a)(3), or (a)(4) shall be allowed to rebut a charge of wrongful ex parte communication upon requesting the opportunity for rebuttal within fifteen (15) days after notice of the communication.

(f) If necessary to eliminate the effect of an ex parte communication received in violation of this section, an administrative law judge who receives the communication may be disqualified and the portions of the record pertaining to the communication may be corrected, modified, or preserved by protective order.

(g) A violation of this section is subject to the sanctions under sections 36 and 37 of this chapter.

As added by P.L.18-1986, SEC.1. Amended by P.L.35-1987, SEC.8.

IC 4-21.5-3-36

Persons presiding in proceedings; violations

Sec. 36. An individual who:

(1) is serving alone or with others as an administrative law judge or as a person presiding in a proceeding under sections 28 through 31 of this chapter; and

(2) knowingly or intentionally violates section 11, 12, or 13 of this chapter;

commits a Class A misdemeanor.

As added by P.L.18-1986, SEC.1.

IC 4-21.5-3-37

Aiding in violation

Sec. 37. A person who:

(1) aids, induces, or causes an individual serving alone or with others as an administrative law judge or as a person presiding in a proceeding under sections 28 through 31 of this chapter to violate section 11, 12, or 13 of this chapter; and

(2) acts with the intent to:

(A) have the individual described in subdivision (1) disqualified from serving in a proceeding; or

(B) influence the individual described in subdivision (1) with respect to any issue in a proceeding;

commits a Class A misdemeanor.

As added by P.L.18-1986, SEC.1.